

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **November 19, 2007**

Time: **9 a.m.** Place: East Building, Beehive Rm.
South of the cafeteria
(Behind the Capitol)

Members

(Attendees=x)

Commission Members

xChair, Glen W. Roberts, <i>Utah Cnty</i>	xDavid M. Lattin, <i>Salt Lake Cnty</i>
xCanyon W. Anderson, <i>Davis Cnty</i>	xGarry M. Goodsell, <i>Iron Cnty</i>
xJerry M. Houghton, <i>Tooele Cnty</i>	

Department Staff

John E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	xPerri Babalis <i>AG Legal Counsel</i>	xConnie Nowland <i>Market Conduct</i>	xMark Kleinfeld <i>Admin. Law Judge</i>
xGerri Jones <i>MC Examiner</i>	xSheila Curtis <i>MC Examiner</i>	xJilene Whitby <i>PIO/Recorder</i>	xBrad Tibbitts <i>Director, P&C Division</i>

Public attendees

Clayton Hansen	Linda Maddock	Mike Andersen	Brenden Faben
Cory Clayson	Mark Bullock	James Seaman	

MINUTES

I. **Welcome and Introductions** / Glen Roberts, Chair

9:05am Glen welcomed Jerry M. Houghton, newest member of the Commission, Connie Nowland, representative of the Department's Market Conduct Division, and members of the public.

II. **Adoption of Minutes of Previous Meeting**

- Glen asked that the second sentence of the fourth bullet under "VI. Old Business," be deleted.
- Garry noted that he made the motion to accept the Licensee Report in Section "III" but did not second it.
- Glen suggested the wording in "Consumer Protections in a Split Closing," under Section VI should read, "No one knew why it was an agenda item."
- Garry made a motion to approve last month's minutes and David seconded it. The vote was unanimous in its favor.

III. **Review & Concur with Licensee Report**

Garry made a **motion** to approve the Individual Monthly Report. The agency report was missing. Canyon seconded it and the vote was unanimous. Later in the meeting the Agency Monthly Report was presented to the Commission. David made a **motion** to approve it, Garry seconded it and the vote was unanimous.

IV. **Number of Cases Open & Closed**

- Glen asked if letters were being sent to complainants upon receipt of their complaints? Brad said they were.
- Glen asked if a complainant was notified when his complaint was closed? No letter is sent, unless it is a consumer. If enforcement measures are taken notification is put on the

Department's website.

Canyon: The complainant should be notified when their complaint is closed.

Gerri: Consumer complainants are notified when a case is closed.

Brad: There is no communication with the public during the investigation.

Glen: If the industry is paying for a person we should get feedback when a case is closed.

Sheila & Brad: We will review this with Mickey and Darrel.

Glen: Put this item as a bullet point on next month's Agenda; "Proposed procedure to communicate procedure for next month."

- Canyon: Could the Commission be a part of simple procedural hearings to resolve more cases more quickly?
- Perri said the Commission did not have investigative authority.
- Gerri & Sheila: Cases that seem straightforward still must go through a process that takes a minimum of two months. The process takes much longer when a respondent appeals a Stipulation and Order.
- Glen would like the Commissioner to insert them into the process so they can communicate better with the industry. Title people are thinking of giving the Commission investigative authority.
- Gerri: Defined "investigate" as what she and Sheila do. "Enforcement" is what Gale, the assistant attorney general, does.

V. **Review & Concur with Enforcement Case Report / Mark Kleinfeld**

Millcreek Land Title Insurance, Inc.: When this enforcement case was presented to the Commission last month they decided the forfeiture amount was too low for the violation. A new forfeiture amount of \$5,000 has since been set and Millcreek has agreed and signed the stipulation. Millcreek's agency license has been suspended for 10 days beginning November 14. They are to do no business in that period of time. Sheila will check on them after the 10 days to verify no business was done. As a result of a previous violation they are on probation until February 21, 2008. Glen made the **motion** to approve the new penalty, Garry seconded it and the vote was unanimous. Glen signed the administrative action form.

VI. **Old Business**

- **Vote on Rule [R592-6](#), Split Closings in Title Insurance.**
 - Last month the vote to approve this rule, and the agreement included in it, tied at 2-2.
 - Canyon proposed that the Commission not pass the rule now. Instead, they should ask the Department to write a bulletin, letter or notice with recommended practice and no penalties. This would eliminate divisiveness in the industry and give them time to make necessary changes. After six months the Commission can look at a rule again.
 - Brad said a bulletin is issued to clarify a rule or the law.
 - Glen said the agreement would cause some problems in the commercial arena.
 - Brad clarified that the Commission does not have the authority to write a bulletin.
 - Garry asked if ULTA would take part in dispersing the recommended best practices?
 - Canyon asked if the Commission could ask the Department to write and send a bulletin out? Brad will check. Put on the agenda for next month. Canyon suggested the bulletin retain the definitions from the rule and be entitled something like, "Split Closing Processes and Procedures."
 - Canyon made a **motion** to not vote on the rule today **pending the Department's response regarding the bulletin**. Jerry seconded the motion. Four voted in favor of the motion and one in opposition.
- **Review Proposed Changes to R590-153, *Unfair Inducements and Marketing Practices*...**
 - Once the revisions to this rule are completed the Department will make the changes and Jilene will email them to the Commission to review for the next meeting.

- Perri: Since the Scope Section of the rule was deleted, the succeeding sections need renumbering.
- "Simultaneous transaction," as noted in (3)E, should have the same definition as in Bulletin 2007-1 regarding Flips.
- Perri: Subsection 4 – Mickey changed term Charged to Rate. Need consistency. Gerri: The term "charges" is used in connection with the performance of Escrow services and the term "rate" is used in connection with the issuance of title insurance policies. Glen suggested that this be consistent throughout the rule.
- Perri: Subsection 4.T: Why is the phrase “except as allowed...” being struck here but not on the introductory paragraph of Section 5?
- Perri: Move Subsection 4U before Subsection 5.C.
- Perri: Subsection 4.W: This section tries to separate title from Qualified Intermediary work and allow title agencies to compete in Qualified Intermediary work.
- Gerri said the rule is written towards 1031 Exchange companies. If the title business is benefiting from the intermediary arm then the Department will have to investigate. If Sheila had information about what these businesses are doing for the next three months then when she receives a complaint she can look at it and see who is representing the whole in an issue. IRC Section 1031 should be included here.
- Commission took a break at 11am. Returned from break at 11:10 am.
- Section 5, Permitted Advertising...
 - Delete Subsection A. Don't need a prohibited section.
 - Subsection B: Keep. Put semicolon after wording in Subsection (1).
 - Insert Subsection 4.U between B & C.
 - Subsection C: No change to text.
 - Subsection E: No change to text. This section is not for gifts but self-promotional materials. Holiday type gifts may be put in another paragraph of the rule. May give this type of gift a time limit.
 - Subsection F: Canyon suggested that instead of all the limitations in the rule, agencies be audited to be sure they are solvent. Limits are subjective. Either allow or disallow activities.
 - Glen said restrictions are so realtors won't be unfairly induced to bring business to a title agency.
 - David asked the definition of an unfair inducement.
 - Glen said the suggestion that the Department audit all agency businesses to be sure they are spending their money properly would create a huge man-hour requirement for the Department.
 - Garry said the title industry had past experience of going to extremes when there are no limits.
 - Canyon said an agency's solvency would limit their activities.
 - Garry said he covers business activities up to the limit allowed under the law and the clients cover the cost above that. The industry cannot regulate themselves.
 - Canyon was concerned about moving away from the free market.
 - Glen said the industry was not a free market because it files its rates and fees.
 - Jerry suggested leaving this subsection as it is and Garry agreed.
 - Subsection G. It was agreed that this subsection needed to clarify that it deals with continuing education and not other educational programs. Wording should be inserted on the second line after "educational material" to read, " programs that are approved by the Utah Insurance Department or the Division of Real Estate under the continuing education...."

- Subsection G.(2): Should the reference to "hour" be reduced to "30 minutes?" Jerry thought that changing it to a half hour would encourage people to drop off donuts without providing education. No change was made.
- Subsection H: Okay as is.
- Subsection I: Okay as is.
- Perri noted that Section 5's introductory paragraph should read, "Except as specifically disallowed in Section R590-153-4 above:"
- The outline numbering should be updated to take note of the addition and deletion of subsections.
- **Draft Rule for Exemption from the 3 year Licensure/Experience Requirement**
Clayton Hanson with Attorneys Title Guaranty Fund was unaware of the status of the rule. He had tried to contact Mickey but had not heard back. Brad explained Mickey's new responsibilities. Clayton noted that the statute required an attorney to have real estate experience. The rule needs to set the level of experience. He said he had made a list of experiences that might qualify. Brad asked Clayton to send him his list and he and Mickey would get to work on the rule.
- **Discuss the use of CPL & IPL in Title Transactions and Underwriter drafts of CPL**
Since Canyon was not ready to discuss this Garry made a **motion** to move this to the next agenda and adjourn the meeting. All agreed.

VII. **New Business**

- **Introduction and Swearing-in of New Commission Member**
At the beginning of the meeting Sandra Christensen, a notary with the Department, swore in Jerry M. Houghton as the new member of the Commission. Jerry signed the document and Sandra notarized it.

VIII. **Other Business** from Committee Members

IX. **Adjourned:** 12:18pm

X. **Next Meeting** December 10, 2007, 9 a.m.

Next Meeting
9:00 a.m.
December 10, 2007